

Appellant-defendant Noel Edward Shuck appeals his convictions for Murder,¹ a felony, and Criminal Recklessness,² a class D felony. Shuck contends that the trial court erroneously denied his motion for a mistrial after the State inadvertently violated a pretrial order in limine barring any reference to the fact that Shuck was on parole at the time he committed the instant offenses. Finding no error, we affirm the judgment of the trial court.

FACTS

On November 4, 2004, Shuck, Richard Short, and Jeremy Black broke into an apartment shared by Ethan Holley and his roommate in Westfield. Upon entering, Short, who was armed with a shotgun, told Holley to “[w]ake up, bitch.” Tr. p. 647-48. Short asked Holley about \$300 that he owed to Short and Shuck. When Holley indicated that he did not have the money, Shuck, who was armed with a .38-caliber handgun, said “[f]*ck it, I’m gonna pop this motherf*cker.” Id. at 651, 1412. Shuck then pointed his gun at Holley’s chest and shot him. Shortly thereafter, Black also shot Holley in the chest with the .22-caliber handgun he was carrying. After running a short distance, Holley collapsed and died.

Shuck, Short, and Black fled the scene in a van. As they drove away, Shuck wiped the .38- and .22-caliber handguns clean and then threw them out the window. Later that day, Shuck was apprehended by the police. He gave a number of statements to the police and assisted them in retrieving the guns that he had thrown from the van. The police located the guns and eventually determined that the .38-caliber bullet removed from Holley’s body had

¹ Ind. Code § 35-42-1-1.

² I.C. § 35-42-2-2.

been fired from Shuck's .38-caliber weapon. Shuck ultimately confessed that he had shot Holley.

On November 4, 2004, the State charged Shuck with murder, class C felony criminal recklessness, and class D felony pointing a firearm. Shuck filed a motion in limine seeking the exclusion of evidence that he had been on parole at the time he committed the instant offenses. The trial court granted Shuck's motion.

During Shuck's five-day jury trial, the State sought to play a videotape of one of Shuck's interviews with police and prepared and offered a transcript of the videotape. Although the videotape had been redacted to remove all references to the fact that Shuck was on parole when he shot Holley, the jury was mistakenly given unredacted copies of the transcript, which contained a reference to Shuck's parole status on the second page. After the mistake was discovered, the unredacted copies were retrieved from the jurors, but not before the videotape had already passed the point represented by the transcript's second page. Shuck moved for a mistrial. The trial court denied the motion but, after redacted versions of the transcript had been given to the jurors, admonished the jury that "[i]f you previously read anything in Exhibit 75-A that is not in Exhibit 75-A-1, you should ignore it completely, consider it stricken from the record, and rely on the previous instructions of the Court concerning the use of a transcript in connection with the use of a videotape." Tr. p 1083-84. Later in the trial, Shuck and the State stipulated that he had a prior felony conviction and that he could not legally possess a firearm.

On May 1, 2006, the jury found Shuck guilty as charged. On September 28, 2006, the trial court found that the pointing a firearm conviction merged into the criminal recklessness conviction. It sentenced Shuck to sixty-five years imprisonment for murder and three years for criminal recklessness, with the sentences to be served consecutively. Shuck now appeals.

DISCUSSION AND DECISION

Shuck's only argument on appeal is that the trial court erroneously denied his motion for a mistrial after the State mistakenly gave the jurors transcripts containing a reference to the fact that Shuck was on parole at the time he committed the instant offenses. Mistrial is an extreme remedy that is warranted only when no other curative measure will rectify the situation. Burks v. State, 838 N.E.2d 510, 519 (Ind. Ct. App. 2005), trans. denied. Whether to grant a motion for mistrial is committed to the trial court's sound discretion, inasmuch as the trial court is in the best position to gauge the surrounding circumstances of an event and its impact, if any, on the jury. McManus v. State, 814 N.E.2d 253, 260 (Ind. 2004), cert. denied. We will reverse the denial of a mistrial only where the appellant demonstrates that the complained-of conduct had a probable persuasive effect on the jury's decision. Glenn v. State, 796 N.E.2d 322, 325 (Ind. Ct. App. 2003). When determining whether a mistrial is warranted, the defendant must demonstrate that the statement or conduct in question was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected. Lehman v. State, 777 N.E.2d 69, 72 (Ind. Ct. App. 2002).

Here, we first emphasize that the trial court admonished the jury to disregard anything in the initial transcript it was given that was not in the subsequent version. A proper

admonishment to the jury is presumed to cure any alleged error, unless the contrary is shown. Hackney v. State, 649 N.E.2d 690, 694 (Ind. Ct. App. 1995). Here, Shuck has not established that the trial court's admonishment was insufficient to cure the error.

Furthermore, we note that Shuck stipulated that he was a convicted felon who could not legally possess a firearm. We fail to see how the fact that Shuck was on parole at the time he committed the instant offenses is at all prejudicial given that the jurors knew that he was a convicted felon.

Finally, we observe that there was overwhelming evidence of Shuck's guilt. Shuck confessed to the crimes. Two eyewitnesses testified unequivocally and consistently that they heard Shuck say that he was going to shoot Holley right before he did just that. Physical evidence corroborated Shuck's confession and the testimony of the eyewitnesses. In light of this evidence, we find that Shuck has failed to establish that the jurors' brief possession of a transcript referencing the fact that Shuck was on parole at the time he committed the instant offenses had a probable persuasive effect on the jury's decision. Consequently, the trial court did not abuse its discretion in denying Shuck's motion for a mistrial.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.